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FACSIMILE TRANSMITTAL**TO:**

Name: Office of Patent Publication
 Certificate of Corrections Branch

Firm: U.S. Patent & Trademark Office

Fax No.: 571-273-8300

Subject: Request for Certificate of Correction

U.S. Patent No. 7,431,722

Issued: October 7, 2008

Gary K. Michelson

APPARATUS INCLUDING A GUARD MEMBER

HAVING A PASSAGE WITH A NON-

CIRCULAR CROSS SECTION FOR PROVIDING

PROTECTED ACCESS TO THE SPINE

Attorney Docket No. 101.0044-03000

Customer No. 22882

Confirmation No.: 7688

FROM:

Name: Thomas H. Martin, Esq.

Phone No.: 330-877-2277

No. of Pages (including this): 11

Date: October 21, 2008

Confirmation Copy to Follow: NO

Certificate

OCT 22 2008

of Correction

Message:**CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8**

I hereby certify that the attached Request for Certificate of Correction (\$100 fee is to be charged to Deposit Account No. 50-3726) with 1 sheet of Form PTO/SB/44 (in duplicate) and 6 pages of supporting documents are being facsimile transmitted to the U.S. Patent and Trademark Office on October 21, 2008.


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PATENT
Attorney Docket No. 101.0044-03000
Customer No. 22882

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re U.S. Patent of:)
Gary K. Michelson)
Patent No. 7,431,722) (Serial No.: 09/497,590)
Issue Date: October 7, 2008) (Filed: June 6, 2000)
For: APPARATUS INCLUDING A GUARD)
MEMBER HAVING A PASSAGE)
WITH A NON-CIRCULAR CROSS)
SECTION FOR PROVIDING)
PROTECTED ACCESS TO THE)
SPINE)

Certificate of Correction Branch
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

REQUEST FOR CERTIFICATE OF CORRECTION

Pursuant to 35 U.S.C. § 254 and 255 and 37 C.F.R. §§ 1.322 and 1.323, this is a request for the issuance of a Certificate of Correction in the above-identified patent. Two (2) copies of Form PTO/SB/44 are appended. The complete Certificate of Correction involves one (1) page.

The mistakes identified in the appended Form to the Crawley et al. reference listing under "Other Publications" and to issued claims 18 and 57 (pending claims 126 and 166, respectively) are of a clerical or typographical nature, or of minor character, and resulted from errors made in good faith by Applicant.

The remaining mistakes identified in the appended Form occurred through the fault of the Patent Office, as clearly disclosed by the records of the application which matured into this patent, and as evidenced in the attached copies of the following documents:

1. Pages 2, 7, and 8 of the Form PTO-1449 filed with the Information Disclosure Statement on June 6, 2000;

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2. Page 1 of the Form PTO-1449 filed with the Information Disclosure Statement on September 16, 2003;
3. Page 3 of the January 30, 2007 Amendment, showing the correct language of issued claim 10 (pending claim 114); and
4. Page 7 of the January 30, 2007 Amendment, showing the correct language of issued claim 49 (pending claim 158).

The requisite fee of \$100.00 as set forth in 37 C.F.R. § 1.20(a) to cover the costs of issuing this Certificate is to be charged to Deposit Account No. 50-3726.

Should any additional fees be needed, authorization is hereby given to charge any fees due in connection with the filing of this request to Deposit Account No. 50-3726.

Issuance of the Certificate of Correction containing the correction is earnestly requested.

Respectfully submitted,

MARTIN & FERRARO, LLP

Dated: October 21, 2008

By: 
Thomas H. Martin
Registration No. 34,383

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OCT 22 2008

PTO/SB/44 (04-05)
(Also Form PTO-1050)UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7,431,722
APPLICATION NO. : 09/497,590
ISSUE DATE : October 7, 2008
INVENTOR(S) : Gary K. Michelson

Page 1 of 1

It is certified that an error appears or errors appear in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

Title Page 2, Section (56) References Cited:

U.S. Patent Documents, first column, line 19: change "Me et al." to --Ma et al.--.

Title Page 3, Section (56) References Cited:

Foreign Patent Documents, second column, line 28: change "2/1992" to --2/1993--;
Other Publications, line 23: change "Springler" to --Springer--;
Other Publications, line 25: change "Springler" to --Springer--; and
Other Publications, line 27: change "Springler" to --Springer--.

Title Page 4, Section (56) References Cited:

Other Publications, second column, line 1: change "Raveh." to --Raveh.--; and
Other Publications, second column, line 17: change "(1988." to --(1988).--;

Column 39:

Line 24: change "for the insertion" to --for insertion--; and
Line 48: change "a least" to --at least--.

Column 41:

Line 28: change "for the insertion" to --for insertion--; and
Line 52: change "a least" to --at least--.

MAILING ADDRESS OF SENDER:
Martin & Ferraro, LLP
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Hartville, Ohio 44632

PATENT NO. 7,431,722

OCT 22 2008

PTO/SB/44 (04-05)
(Also Form PTO-1050)UNITED STATES PATENT AND TRADEMARK OFFICE
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PATENT NO. 7,431,722

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Lit. 2 M.B./	3,848,601	11/19/74	Ma et al.			
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Form PTO 1449

2

CCT 22 2003

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	0 280 044	3/18/88	Europe			
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Lit.	Raveh, J., et al.; Surgical Procedures for Reconstruction of the Lower Jaw Using the Titanium-Coated Hollow-Screw Reconstruction Plate System: Bridging of Defects; Otolaryngologic Clinics of North America; Vol 20, No. 3 (August 1987)
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↓	Lumbar Spine Surgery, Techniques and Complications; History of Lumbar Spine Surgery (1994); pp. 11-15, 27, 30, 35-45, 265-268.
EXAMINER	Michael Brown/
DATE CONSIDERED	07/29/2008
EXAMINER: Initial if citation considered, whether or not citation is in conformance with MPEP § 608; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to the applicant.	

OMB 0651-0031

Substitute for FORM PTO-1449		SEP 21 2003		Attorney Docket Number 101.0044-03000		Customer No. 22682	
INFORMATION DISCLOSURE IN AN APPLICATION				Applicant Gary K. Michelson, M.D.		Application Number 09/497,590	
(Use several sheets if necessary) Sheet <u>1</u> of <u>2</u>				Filing Date June 6, 2000		Group Art Unit 3732	
Examiner Initial		Document Number		Date		Name	
Lit. 3a/3b		3,719,186		03/1973		Marig, Jr.	
Lit. 3c		4,349,921		08/1982		Kuntz	
Lit. 3b/3c		4,570,824		02/1986		Wu	
Lit. 3c		4,714,469		12/1987		Kenna	
Lit. 3c		5,026,373		06/1991		Ray et al.	
Lit. 3a/3c		5,055,104		10/1991		Ray	
Lit. 3a/3c		5,489,307		02/1996		Kuslich et al.	
U.S. PATENT DOCUMENTS							
EXAMINER INITIAL		DOCUMENT NUMBER		DATE		NAME	
Lit. 3a/3b		3,719,186		03/1973		Marig, Jr.	
Lit. 3c		4,349,921		08/1982		Kuntz	
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Lit. 3c		5,026,373		06/1991		Ray et al.	
Lit. 3a/3c		5,055,104		10/1991		Ray	
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FOREIGN PATENT DOCUMENTS							
		DOCUMENT NUMBER		DATE		COUNTRY	
Lit. 3a/3b/3c		EP 0 077 159		04/1983		Europe	
						TRANSLATION (YES/NO)	
						N/A	
OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)							
Lit. 3a/3c		Cloward, Ralph B.; Surgical Techniques for Lumbar Disc Lesions; Codman; Signature Serial 3.					
Lit. 3c		Cloward, Ralph B.; Ruptured Cervical Intervertebral Discs: Removal of Disc & Osteophytes & Anterior Cervical Interbody Fusion (A.C.I.F.); Codman; Signature Series 4.					
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Lit. 3a/3b		Otero-Vich, Jose M.; Anterior Cervical Interbody Fusion with Threaded Cylindrical Bone; pp. 760-763; Journal of Neurosurgery, November 1985, Volume 63, No. 5.					
Lit. 3c		Hutter, Charles George; Spinal Stenosis and Posterior Lumbar Interbody Fusion; pp. 103-114; Clinical Orthopaedics and Related Research; No. 193; The Association of Bone and Joint Surgeons.					
Lit. 3c		Lin, Paul M.; Posterior Lumbar Interbody Fusion; pp. 114-122; Charles C. Thomas; Springfield, Illinois.					
Lit. 3c		Lin, Paul M.; Lumbar Interbody Fusion: Principles and Techniques in Spine Surgery; Techniques and Complications; pp. 61, 98, 120, 146, 173, 180-184, 204, 224, 225, 231; Aspen Publishers, Inc.; 1989.					
Lit. 3c		Tan, S.B.; A Modified Technique of Anterior Lumbar Fusion with Femoral Cortical Allograft; pp. 83-93; The Journal of Orthopaedic Surgical Techniques, Volume 5, No. 3, 1990.					
Lit. 3a/3b		Muller, M.E.; Manual of Internal Fixation: Techniques Recommended by the AO Group; Second Edition, Expanded and Revised; pp. 3-20, 27-41, 53-58, 71-78, 84, 311, 324; Springer-Verlag; 1979.					
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Form PTO 1449 MASTER
PTO/5B/ 08 (10-02)

Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

OCT 22 2008

Application No. 09/497,590
Amendment dated January 30, 2007
Reply to Office Action of August 28, 2006

107. (previously presented) The apparatus of claim 106, wherein said extensions are diametrically opposed to each other and spaced apart from one another to provide access to the adjacent vertebral bodies from within the disc space.
108. (previously presented) The apparatus of claim 105, wherein the height of said extension has at least a portion that approximates the height of the normal disc space between the adjacent vertebral bodies.
109. (previously presented) The apparatus of claim 106, wherein said extensions have the same height.
110. (previously presented) The apparatus of claim 105, wherein said upper and lower surfaces for bearing against the adjacent vertebral bodies diverge away from said guard member along at least a portion of their length.
111. (previously presented) The apparatus of claim 105, wherein said upper and lower surfaces for bearing against the adjacent vertebral bodies converge away from said guard member along at least a portion of their length.
112. (previously presented) The apparatus of claim 105 further comprising means for penetrating at least one of the two adjacent vertebral bodies.
113. (previously presented) The apparatus of claim 112, wherein said penetrating means includes a prong for penetrably engaging at least one of the adjacent vertebral bodies.
- X 114. (previously presented) The apparatus of claim 112, wherein said penetrating means includes teeth for insertion into the two adjacent vertebral bodies. X
115. (previously presented) The apparatus of claim 112, wherein said penetrating means is located at said distal end of said guard member.

Claims 116-120 (cancelled).

121. (previously presented) The apparatus of claim 105, wherein said extension has a tapered leading end to facilitate placement of said extension into the disc space.
122. (previously presented) The apparatus of claim 105, in combination with a spinal fusion implant.

OCT 22 2008

Application No. 09/497,590
Amendment dated January 30, 2007
Reply to Office Action of August 28, 2006

properly align and distance apart the adjacent vertebral bodies from at least in part within the disc space between the adjacent vertebral bodies.

150. (previously presented) The apparatus of claim 149, further comprising a second extension extending from said distal end of said guard member for insertion into the disc space and for bearing against the adjacent vertebral bodies.
151. (previously presented) The apparatus of claim 150, wherein said extensions are diametrically opposed to each other and spaced apart from one another to provide access to the adjacent vertebral bodies from within the disc space.
152. (previously presented) The apparatus of claim 150, wherein said extensions have the same height.
153. (previously presented) The apparatus of claim 149, wherein the height of said extension has at least a portion that approximates the height of the normal disc space between the adjacent vertebral bodies.
154. (previously presented) The apparatus of claim 149, wherein said upper and lower surfaces for bearing against the adjacent vertebral bodies diverge away from said guard member along at least a portion of their length.
155. (previously presented) The apparatus of claim 149, wherein said upper and lower surfaces for bearing against the adjacent vertebral bodies converge away from said guard member along at least a portion of their length.
156. (previously presented) The apparatus of claim 149 further comprising means for penetrating at least one of the two adjacent vertebral bodies.
157. (previously presented) The apparatus of claim 156, wherein said penetrating means includes a prong for penetrably engaging at least one of the adjacent vertebral bodies.
- X 158. (previously presented) The apparatus of claim 156, wherein said penetrating means includes teeth for insertion into the two adjacent vertebral bodies. X
159. (previously presented) The apparatus of claim 156, wherein said penetrating means is located at said distal end of said guard member.